

FILED

JAN 08 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LANARE WISE,

Petitioner,

vs.

RONALD M. WHYTE, Judge,

Respondent.

No. C 12-05931 EJD (PR)

ORDER OF DISMISSAL; GRANTING
LEAVE TO PROCEED *IN FORMA*
PAUPERIS; DENYING CERTIFICATE
OF APPEALABILITY

(Docket No. 4)

Petitioner, a state prisoner proceeding *pro se*, has filed a petition for a writ of mandamus pursuant to 28 U.S.C. § 1651.

In Wise v. Walker, No. 5:09-00268-RMW, the Honorable Ronald M. Whyte denied Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254. The Ninth Circuit Court of Appeals denied a certificate of appealability and the United States Supreme Court denied a petition for a writ of certiorari and a petition for rehearing. Petitioner now petitions this Court for the relief denied by all of the other courts. However, this Court does not have jurisdiction to review or compel the performance of Judge Whyte in the other case. See generally United States v. Park Place Assoc., Ltd., 563 F.3d 907, 924-25 (9th Cir. 2009).

This writ of mandamus is more appropriately construed as a second or successive petition. However, it must still be denied as Petitioner has not obtained an order from the court of appeals allowing him to file a second or successive petition. See 28 U.S.C. §

2244(b)(3)(A).

For the foregoing reasons, the writ of mandamus is DISMISSED.

To the extent the writ of mandamus could be construed as a writ of habeas corpus, pursuant to Rule 11 of the Rules Governing Section 2254 Cases, a certificate of appealability ("COA") under 28 U.S.C. § 2253(c) is DENIED because it cannot be said that "reasonable jurists" would find the district court's assessment of the constitution claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Petitioner's motion for leave to proceed in forma pauperis, (Docket No. 4) is GRANTED.

This order terminates Docket No. 4.

DATED: 1/7/13


EDWARD J. DAVILA
United States District Judge

United States District Court

For the Northern District of California

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LANARE WISE,

Petitioner,

v.

RONALD M. WHYTE, Judge,

Respondent.

Case Number CV 12-05931 EJD (PR)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/08/13, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) inter-office delivery receptacle located in the Clerk's office.

Lanare Wise
T76040
New Folsom State Prison
P. O. Box 290066
Represa, CA 95671

DATED: 1/08/13

Richard W. Wieking, Clerk
By: Elizabeth Garcia, Deputy Clerk